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HARNESSE, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

Application Number: 09/840,278
Filing Date: April 23, 2001
Appellant(s): PANGERC ET AL.

Ryan Massey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 8, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 2-13, 16 and 18-21.

Claim 15 has been allowed.

Claim 14 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 17 and 22-26 have been canceled.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 12 and 13 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,553,710	TAKAMA	9-1996
6,065,595	RATCLIFF	5-2000
5,351,818	DANESHVAR	10-1994
5,593,058	SPENCER et al.	1-1997
5,699,925	PETRUZZI	12-1997

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Issue A

Claims 2-7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daneshvar in view of Ratcliff.

Daneshvar discloses the invention except for the latches for the inner lids. Ratcliff teaches rotational latch (55) which slides with respect to the plane of the lid when the lid is closed. The latch closes the transparent inner lids. It would have been obvious to modify the inner lids to both have a latch to prevent objects from inadvertently spilling from either the body or cover when the cover is in an open position relative to the body of the container.

Issue B

Claims 6-8, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daneshvar in view of Ratcliff as applied to claim 6 above, and further in view of Takama.

The combination discloses the invention except for the divider wall. Takama teaches an adjustable divider wall. It would have been obvious to add an adjustable divider wall in order to separate different items stored in the body.

Issue C

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daneshvar in view of Ratcliff as applied to claim 4 above, and further in view of Petruzzi

The combination discloses the invention except for the recessed and extended portions. Petruzzi teaches recessed and extended portions. It would have been obvious to add recessed and extended portions in order to provide stable stacking surfaces to allow the containers to stack more stably.

Issue D

Claims 10, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takama in view of Spencer and Daneshvar.

Takama discloses a base with an adjustable divider. Takama discloses invention except for the recesses portions in the end face and the cover. Spencer teaches a divider (one of the wall portions 101 or one of the floor sections 112) which have recessed portions in their end faces for receiving tabs (on corner sections 102 or dovetail tab portions 204). It would have been obvious to add the recessed portions and corresponding tabs in order to provide a connection between the end of the spacer and the wall it is to be connected to that is stronger and can better resist forces normal to spacer. Daneshvar teaches a cover. It would have been obvious to add a cover in order to protect the container's contents from damage.

Issue E

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takama in view of Spencer and Daneshvar as applied to claim 10 above, and further in view of Ratcliff.

The combination discloses the invention except for the latches for the inner lids. Ratcliff teaches rotational latch (55) which slides with respect to the plane of the lid when the lid

is closed. The latch closes the transparent inner lids. It would have been obvious to modify the inner lids to both have a latch to prevent objects from inadvertently spilling from either the body or cover when the cover is in an open position relative to the body of the container.

Issue F

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ratcliff.

Ratcliff discloses the invention except for the raised lip. Raised lips are well known. It would have been obvious to add a raised lip in order to strengthen the inner lid panel to prevent it from buckling and becoming damaged.

(11) Response to Argument

Issues A, B & C

Claim 4 states "said first and second inner lid portions include a first and second latch respectively." Appellant argues that the latch of Ratcliff is mounted to the base or tray rather than to the lid. A latch provides a connection between a catch or first part (which is usually relatively stationary) and a second part (which is usually relatively movable), although, two parts can form a latch and be of the same relative stiffness as long as they are resilient enough to provide an interlocking connection. In the case of the present invention, the fingers 72 of arm 98 of sliding latch portion (movable) 70 engage the rear surface of slot 120 of base 12. The rear surface and the interior of the slot 120 provide a second latch portion (stationary). Ratcliff's latch is similar in that rotatable latch portion 55 is movable and is mounted to the rib 45

extending between covers 51 and 53. Since portion 55 is rotatable it slides over the rib's surface and it also slides over the upper surfaces of the covers 51 and 53 when the covers are secured in their closed position. Therefore, it is the upper surfaces of the covers 51 and 53 which provide a stationary latch portions (the portions of the upper surfaces which engage the rotatable latch portion) and these stationary latch portions are mounted to the covers.

Although, Ratcliff's design provides a single rotating part to latch two lids and is efficient since it uses less than two rotating parts, this doesn't diminish the fact that two separate latches are formed. More importantly, one having ordinary skill in the art would certainly realize that a second, separate rotating part could be applied to the cover portion's inner lid than the first rotating part applied to the base portion's inner lid.

Issues D & E

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Appellant directs attention to the narrow end face of Takama's partition board 2. Figures 1 and 2 of Spencer details a dove-tail recess for receiving a dove-tail projection in the second panel connector end 202 of the relatively narrow side panel 106 or 203. The addition of recesses

on the narrow side edges of partition board 2 of Takama provides additional strength and enhances the alignment of the spacer/divider panel with wall or walls which is connects to.

Issue F

The rotating latch is slidable as established in the discussion of Issues A, B and C.

Appellant has not traverse the statement that raised lips are well known in the art. In paper 7, appellant disagrees with the examiner's well known statement insofar as there was no teaching or suggestion within Ratcliff. In the Brief, appellant states that the examiner has failed to cite any reference which discloses a raised lip. It doesn't seem that appellant strongly believes in this position and has not sufficiently seasonably traversed or seasonably challenged the well known statement. The examiner directs the Board's attention to the Byrns (4,615,464) and Brady (1,849,565) references cited by appellant in paper 2. Byrns teaches ribs 12 on the base and cover as raised lips. Brady teaches beveled edge 9 which forms the uppermost raised lip on the lid or cover 4 of a travel bag.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano

Primary Examiner

Art Unit 3727

sjc

November 10, 2003

Conferees

SKC 

LWY 

HARNESS, DICKY & PIERCE, P.L.C.

P.O. BOX 828

BLOOMFIELD HILLS, MI 48303